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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 268

JANET MARIE NOVAK
101 Enchanted Way
San Ramon, CA 94583

A C C U S A T I O N

Respiratory Care Practitioner License No. 8554

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 9, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 8554 to Janet Marie Novak (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).”

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications,
22 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
23 the meaning of this article. The board shall order the license suspended or revoked, or
24 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section
27 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
28 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act.

11 “(c) Conviction of a crime involving driving under the influence or reckless
12 driving while under the influence.”

13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,
16 the board or the administrative law judge may direct any practitioner or applicant found to have
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
18 investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other
22 administrative, filing, and service fees."

23 11. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs
26 associated with monitoring the probation."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction)

3 12. Respondent is subject to disciplinary action under code sections 3750(d),
4 3750(g), 3752 and CCR 1399.370(a) and (c) [substantially related conviction] in that in 2007,
5 she was convicted of violating Vehicle Code section 23152(b) [driving with .08% or more blood
6 alcohol content.] The circumstances are as follows:

7 13. On or about July 6, 2007, San Ramon Police Officer J. Goyich responded
8 to a report of a hit and run vehicle collision. When he arrived, he contacted a male individual
9 who told him that a vehicle had collided with a light pole at the location. Two witnesses
10 informed Officer Goyich that the driver of the vehicle was an older white female, with blond hair
11 and wearing a white t-shirt. They said that she crashed the right front of her car into the light
12 pole, backed up and “took off around the corner,” and that she did not get out of her vehicle to
13 check the damage.

14 14. Officer Goyich investigated, and discovered a vehicle matching the
15 description parked in front of a residence 500 feet from the collision site. He knocked on the
16 front door, and a woman (later identified as Respondent) came to the door. She matched the
17 witness’ description of the driver of the vehicle. Officer Goyich noticed that her eyes were red
18 and watery, and her speech was slurred. She had a strong odor of alcohol on her breath, and was
19 swaying back and forth while she talked to him.

20 15. Respondent stated that she had been drinking red wine since “before 10:00
21 a.m.” that morning and then drove her car to buy more alcohol. She then stated that she was on
22 her way to work but since she had been drinking alcohol, Respondent decided to go home. She
23 stated that she was trying to retrieve her cell phone from the car floorboard when she ran into the
24 light pole, and she then drove home to call her husband. She admitted that she had taken
25 medication which cautioned against drinking alcohol at the same time.

26 16. Officer Goyich performed a series of field sobriety tests which respondent
27 was unable to successfully complete. She submitted to a preliminary alcohol screening (PAS)
28 test which indicated her breath alcohol content was .237% and .246%.

1 17. Two witnesses identified respondent as the driver of the vehicle involved
2 in the collision. Based on her poor performance on the field sobriety tests, her poor driving, and
3 her objective symptoms of intoxication, Officer Goyich arrested respondent for violating Vehicle
4 Code section 23152(a) [driving under the influence of alcohol] and Vehicle Code section
5 20002(a) [hit and run.] She was advised of her Miranda rights, and agreed to talk. She stated
6 that she would be glad to pay for the damage that she caused as a result of the collision. She
7 asked if she could be released because she “had not really driven anywhere” and came right
8 home. She admitted that she knew drinking and driving was illegal.

9 18. Officer Padilla transported respondent to San Ramon Police Department
10 where a blood test was collected about 2:25 p.m. The blood test results indicated Respondent’s
11 blood alcohol content was .24%.

12 19. On or about August 11, 2007, a misdemeanor complaint titled *People of*
13 *the State of California vs. Janet Marie Novak*, case no. 132748-5, was filed in Contra Costa
14 County Superior Court. Count 1 charged Respondent with a misdemeanor violation of Vehicle
15 Code section 23152(a) [driving under the influence of alcohol.] Count 1 contained a special
16 allegation that in the commission of the above offense, Respondent had a blood alcohol content
17 of .20% or more, by weight, within the meaning of Vehicle Code section 23538(b)(2). Count 2
18 of the complaint charged Respondent with a misdemeanor violation of Vehicle Code section
19 23152(b) [driving with .08% or more blood alcohol content.] Count 2 also contained a special
20 allegation pursuant to Vehicle Code section 23578(b)(2). Count 3 alleged a violation of Vehicle
21 Code section 20002(a) [hit and run driving.]

22 20. On or about October 24, 2007, Respondent was convicted on her plea of
23 no contest to Count 2, and the Court dismissed Counts 1 and 3. She admitted the special
24 allegation. Respondent was sentenced to 3 years probation, ordered to serve 2 days in the work
25 alternative program, pay fines, enroll and complete a level two 9 month Driving While
26 Intoxicated (DWI) program and given standard terms and conditions.

27 21. Therefore, Respondent is subject to disciplinary action under code sections
28 3750(d), 3750(g), 3752 and CCR 1399.370(a) and (c) [substantially related conviction] in that in

1 2007, she was convicted of violating Vehicle Code section 23152(b) [driving with .08% or more
2 blood alcohol content.]

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

6 1. Revoking or suspending Respiratory Care Practitioner License Number
7 8554, issued to Janet Marie Novak;

8 2. Ordering Janet Marie Novak to pay the Respiratory Care Board the costs
9 of the investigation and enforcement of this case, and if placed on probation, the costs of
10 probation monitoring;

11 3. Taking such other and further action as deemed necessary and proper.

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13 DATED: February 19, 2009

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16 Original signed by Liane Zimmerman for:
17 STEPHANIE NUNEZ
18 Executive Officer
19 Respiratory Care Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

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